

STATE OF INDIANA) IN THE TIPPECANOE CIRCUIT COURT
TIPPECANOE COUNTY) SS:
) TO THE 2019 TERM

WEST LAFAYETTE)
COMMUNITY SCHOOL)
CORPORATION)
Plaintiff,)
)
v.) CAUSE NO. _____
)
ERIC HOLCOMB,)
in his official capacity as Governor)
of the State of Indiana,)
Defendant.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff West Lafayette Community School Corporation (“Plaintiff”), by counsel, Ryan C. Munden, and for its Complaint for Declaratory and Injunctive Relief against Defendant Eric Holcomb, in his official capacity as Governor of the State of Indiana, alleges and states:

INTRODUCTION

1. This case challenges the constitutionality of Indiana Code Section 20-26-7-1 and 20-26-7.1 on two grounds. To the extent they require the sale or lease of property for one dollar (\$1.00) or not more than the minimum bid, said statutes constitute: (i) a taking without just compensation in violation of Article I, Section 21 of the Indiana Constitution; and (ii) a taking without just compensation in violation of the Takings Clause of the Fifth Amendment of the United States Constitution.

2. Indiana Code Section 20-26-7-1 and 20-26-7.1 should be declared unconstitutional on their face and as applied to Plaintiff to the extent they require the sale or

lease of property for one dollar (\$1.00) or not more than the minimum bid, and this Court should enjoin Governor Holcomb from enforcing same against Plaintiff.

JURISDICTION AND VENUE

3. This Court has jurisdiction to hear this complaint pursuant to Indiana Code Section 33-28-1-2 and Indiana Code Section 34-14-1-1.

4. Venue is appropriate pursuant to Indiana Rule of Trial Procedure 75(A)(5).

5. Declaratory relief is authorized by Indiana Code Section 34-14-1 et seq. and Indiana Rule of Trial Procedure 57.

PARTIES

6. Plaintiff West Lafayette Community School Corporation is a school corporation located in Tippecanoe County in the State of Indiana.

7. Defendant Eric Holcomb is the duly elected Governor of the State of Indiana.

BACKGROUND

8. Plaintiff is the owner of certain property located at N Salisbury Street, West Lafayette, Indiana with Parcel ID 79-07-17-304-002.000-026 (the “WLCSC Property”).

9. The WLCSC Property was used as the Happy Hollow Elementary School until on or about October 15, 2018.

10. From on or about January 1, 2019 until the present, the WLCSC Property has been leased to the City of West Lafayette for administrative offices.

11. Beginning in 2005, the Indiana General Assembly enacted statutory provisions whereby public school corporations were required to offer school buildings no longer being used for classroom instruction to charter schools for purchase or lease, subject to the requirements of Indiana Code Section 20-26-7-1.

12. On or about May 5, 2019, Governor Holcomb signed into law House Enrolled Act 1641 which changed certain requirements of Indiana Code Section 20-26-7-1, including:

- a. School corporations must now inform the Indiana Department of Education not later than 10 days after passing a resolution to close, no longer use, or no longer occupy a school building previously used for classroom instruction;
- b. The school corporation must make the building available for inspection by an interested charter school;
- c. Within five days of notification, the Indiana Department of Education must provide written notice to all charter school authorizers and statewide charter organizations of the available building;
- d. If, within thirty days of its notification, a charter school submits a preliminary request to purchase or lease the building to the Indiana Department of Education, along with all required documentation, the public school corporation shall either sell or lease the building to the interested charter school for one dollar (\$1.00).
- e. If the school corporation receives notification that there have been no requests to purchase or lease the subject building then the school corporation must sell the school building to an accredited nonpublic school or postsecondary educational institution that sends a letter of intent to the school corporation to purchase the vacant or unused school building for an amount not more than the minimum bid for the vacant or unused school building determined in accordance with IC 36-1-11.

13. Indiana Code Section 20-26-7-1 now reads in its entirety:

(a) Except as otherwise provided in IC 20-26-7.1, if a governing body of a school corporation determines that any real or personal property:

(1) is no longer needed for school purposes; or

(2) should, in the interests of the school corporation, be exchanged for other property;

the governing body may sell or exchange the property in accordance with IC 36-1-11.

(b) Money derived from the sale or exchange of property under this section shall be placed in the school corporation's operations fund.

(c) A governing body may not enter into a lease agreement or make a covenant that prohibits the sale of real property to another educational institution.

14. Indiana Code Section 20-26-7.1-4 reads in its entirety:

(a) Not later than ten (10) days after passing a resolution or taking other official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction, the governing body shall:

(1) notify the department of the official action and the effective date that the school building will be closed, no longer used, or no longer occupied;

(2) make the school building available for inspection by a charter school that notifies the department that it is interested in leasing or purchasing the school building described under section 3 of this chapter; and

(3) make the following information available to a charter school described in subdivision (2):

(A) Estimates of the operating expenses for the school building for the past three (3) years.

(B) Written information regarding the condition of the building, including the age of the roof and the HVAC system, and any known conditions which, in the governing body's opinion, require prompt repair or replacement.

(C) A description of the property as shown on the current tax statement.

(b) Within five (5) days of receiving notice under subsection (a)(1), the department shall provide written notification to each charter school authorizer (excluding school corporation authorizers as defined in IC 20-24-1-2.5(1)) and statewide organizations representing charter schools in Indiana of the school corporation's resolution or official action described in subsection (a), including the date when the school building will close, no longer be used, or become vacant.

(c) The school corporation shall lease the school building to a charter school for one dollar (\$1) per year for as long as the charter school uses the school building for classroom instruction for a term at the charter school's discretion, or sell the school building for one dollar (\$1), if the charter school does the following:

(1) Within thirty (30) days of receiving the department's notice under subsection (b), a charter school must submit a preliminary request to purchase or lease the school building.

(2) Subject to subsection (d), within ninety (90) days of receiving the department's notice under subsection (b), a charter school must submit to the school corporation the following information:

(A) The name of the charter school that is interested in leasing or purchasing the vacant or unused school building.

(B) A time frame, which may not exceed two (2) years from the date that the school building is to be closed, no longer used, or no longer occupied, in which the charter school intends to begin providing classroom instruction in the vacant or unused school building.

(C) A resolution, adopted by the board of the charter school stating that the board has determined that, after the charter school has made any necessary repairs or modifications, the school building will be sufficient to meet the charter school's needs and can be operated within the charter school's budget.

(D) This clause applies to a vacant or unused school building with more than two hundred thousand (200,000) gross square feet. In addition to the information provided in clauses (A) through (C), a charter school shall submit the following:

(i) The charter school's projected enrollment when all of the grade levels are added.

(ii) A letter from the charter school's authorizer or prospective authorizer that indicates that the charter school's authorizer or prospective authorizer has reviewed

the items described in clauses (B) through (C) and that the projected enrollment of the charter school when all of the grade levels are added or fully implemented will be at least sixty percent (60%) of the maximum annual student enrollment of the school building during the past twenty-five (25) years as validated by records maintained or created by the department.

(d) If the department does not receive any preliminary requests to purchase or lease a school building within the time frame described in subsection (c)(1) and except as provided in section 7 of this chapter, the department shall send notification to the school corporation that the department has not received any preliminary requests to purchase or lease the school building. Upon receipt of the notification under this subsection, the school corporation may sell or otherwise dispose of the school building in accordance with IC 36-1-11, IC 20-25-4-14, IC 20-26-5-4(7), and section 8 of this chapter.

(e) In the event that two (2) or more charter schools submit a preliminary request to purchase or lease a school building within the time frame described in subsection (c)(1), the department shall send notification to an authorizer described in IC 20-24-1-2.5(3) and each statewide charter school authorizer and statewide organization representing charter schools in Indiana (excluding school corporation authorizers as defined in IC 20-24-1-2.5(1)) and the school corporation that the department has received two (2) or more preliminary requests under this section. An authorizer committee shall be established, with each statewide authorizer that has authorized one (1) or more charter schools appointing a representative, and the committee shall establish the chairperson and procedures for the committee. Within sixty (60) days of receiving notice under this subsection, the committee shall select which charter school may proceed under subsection (c)(2) to purchase or lease the school building or determine if two (2) or more charter schools should co-locate within the school building. The committee shall give priority to a charter school located within one (1) mile of the vacant or unused school building. In the event that the committee determines that two (2) or more charter schools should co-locate in the school building and, if applicable, that the combined enrollment of the charter schools will meet or exceed the requirements in subsection (c)(2)(D), the charter schools have sixty (60) days to submit a memorandum of understanding stating that the charter schools shall be jointly and severally liable for the obligations related to the sale or lease of the school building, and specifying how the charter schools will utilize the school building and share responsibility for operational, maintenance, and renovation expenses. If the charter schools are unable to agree, the charter schools shall be deemed to have revoked their prior request regarding the lease or sale of the school building.

(f) A school corporation shall lease the school building for one dollar (\$1) per year for as long as the charter school uses the school building for classroom instruction for any combination of kindergarten through grade 12 for a term at the

charter school's discretion, or sell the school building to the charter school for one dollar (\$1), if the charter school has met the requirements set forth in subsection (c) and uses the vacant or unused school building to provide classroom instruction to students in any combination of kindergarten through grade 12. If a charter school has not met the requirements under subsection (c), the school corporation may, subject to section 7 of this chapter, sell or otherwise dispose of the school building in accordance with IC 36-1-11, IC 20-25-4-14, IC 20-26-5-4(7), and section 8 of this chapter.

15. Indiana Code Section 20-26-7.1-7 reads in its entirety:

This section applies to a school building with a gross square footage of two hundred thousand (200,000) square feet or less.

- (b) If the school corporation receives notification from the department that the department has not received any preliminary requests to purchase or lease a vacant or unused school building under section 4(c)(1) of this chapter or a charter school has not met the requirements under section 4(c)(2) or 4(e) of this chapter, the school corporation must sell the school building to an accredited nonpublic school or postsecondary educational institution that sends a letter of intent to the school corporation to purchase the vacant or unused school building for an amount not more than the minimum bid for the vacant or unused school building determined in accordance with IC 36-1-11, or an amount agreed to by both parties.
- (c) The accredited nonpublic school or postsecondary educational institution must submit its letter of intent to purchase the school building within thirty (30) days of the date the school corporation passes a resolution or takes other official action to close, no longer use, or no longer occupy a school building that was previously used for classroom instruction. However, in the event that a charter school has submitted a preliminary request to purchase or lease a school building, the accredited nonpublic school or postsecondary educational institution may send a letter of intent to purchase or lease the school building within ninety (90) days of the date that the school corporation passed a resolution or took official action to close, no longer use, or no longer occupy a school building.
- (d) Within forty-five (45) days of notice of the minimum bid, the accredited nonpublic school or postsecondary educational institution must provide a binding offer to the school corporation to purchase the property in its current condition and provide a nonrefundable down payment equal to five percent (5%) of the minimum bid or an amount agreed to by both parties. In the event that two (2) or more binding offers are submitted to the school corporation under this subsection, the school corporation may select which offer to accept.
- (e) If the sale of the property does not close within one hundred eighty (180) days of the school corporation's receipt of the binding offer, and the delay in closing is

not caused by the school corporation or its representatives, the school corporation may refund the down payment and sell or otherwise dispose of the school building under IC 20-25-4-14, IC 20-26-5-4(7), or IC 36-1-11.

COUNT I -- INDIANA CODE SECTION 20-26-7-1 AND 20-26-7.1 CONSTITUTE A TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF ARTICLE I, SECTION 21 OF THE INDIANA CONSTITUTION

16. Plaintiff incorporates by reference paragraphs 1 through 15 of this Complaint.
17. Article I, Section 21 of the Indiana Constitution states, "No person's particular services shall be demanded, without just compensation. No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered."
18. Indiana Code Section 20-26-7-1 and 20-26-7.1 require property to be conveyed or leased for \$1.00, or not more than the minimum bid, without regard for its lease value, or actual value which in the present matter upon Plaintiff's information and belief is at least \$6,000,000.00, and without regard for the potential of competitive bidding.
19. The Indiana legislature has elsewhere provided that the state must pay market value for real estate owned by a school corporation, see Indiana Code Section 20-26-7-39, which is incongruous with Indiana Code Section 20-26-7-1 and 20-26-7.1 which takes school property for \$1.00.
20. Plaintiff constitutes a "person" and the WLCSC Property constitutes "property" for purposes of the Article I, Section 21 of the Indiana Constitution.
21. Indiana Code Section 20-26-7-1 and 20-26-7.1 constitute a taking without just compensation and should be declared unconstitutional.

22. Plaintiff will be deprived of all or substantially all economic use of the WLCSC Property if it is required to sell or lease the WLCSC Property for \$1.00 pursuant to Indiana Code Section 20-26-7-1 and 20-26-7.1.

COUNT II – INDIANA CODE SECTION 20-26-7-1 AND 20-26-7.1 CONSTITUTE A TAKING WITHOUT JUST COMPENSATION IN VIOLATION OF THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

23. Plaintiff incorporates by reference paragraphs 1 through 22 of this Complaint.

24. The Takings Clause of the Fifth Amendment of the United States Constitution states, “nor shall private property be taken for public use, without just compensation.”

25. The Fifth Amendment’s Takings Clause applies to the States via the Due Process Clause of the Fourteenth Amendment.

26. Article I, Section 21 of the Indiana Constitution and the Takings Clause of the Fifth Amendment of the United States Constitution are analyzed in like manner. *See Cheatham v. Phole*, 789 N.E.2d 467, 472-73 (Ind. 2003) (citing *B & M Coal Corp. v. United Mine Workers of Am.*, 501 N.E.2d 401, 406 (Ind. 1986)).

27. Indiana Code Section 20-26-7-1 and 20-26-7.1 require property to be conveyed or leased for \$1.00, or not more than the minimum bid, without regard for its lease value or actual value, which in the present matter upon Plaintiff’s information and belief such property is worth at least \$6,000,000.00, and without regard for the potential of competitive bidding.

28. The WLCSC Property constitutes “private property” for purposes of the Fifth Amendment’s Takings Clause.

29. Indiana Code Section 20-26-7-1 and 20-26-7.1 constitute a taking without just compensation and should be declared unconstitutional.

30. Plaintiff will be deprived of all or substantially all economic use of the WLCSC Property if it is required to sell or lease the WLCSC Property for \$1.00 pursuant to Indiana Code Section 20-26-7-1 and 20-26-7.1.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. Declaratory judgment that Indiana Code Section 20-26-7-1 and 20-26-7.1 constitute a taking without just compensation in violation of Article I, Section 21 of the Indiana Constitution;
2. Declaratory judgment that Indiana Code Section 20-26-7-1 and 20-26-7.1 constitute a taking without just compensation in violation of the Takings Clause of the Fifth Amendment of the United States Constitution;
3. Injunctive relief permanently enjoining Governor Holcomb and all other State officials from enforcing or otherwise giving effect to Indiana Code Section 20-26-7-1 and 20-26-7.1 to the extent it requires the sale or lease of property for one dollar (\$1.00) or not more than the minimum bid;
4. Costs and attorney fees pursuant to Indiana Code Section 34-14-1-10;
5. Such other relief as the Court may deem just and proper.

Respectfully Submitted,

/s/ Ryan C. Munden _____
Ryan C. Munden
Attorney No. 29401-49
Robert C. Reiling, Jr.
Attorney No. 5956-79
REILING TEDER & SCHRIER, LLC
250 Main Street, Suite 601
P.O. Box 280

Lafayette, IN 47902-0280
Telephone: (765) 423-5333
Facsimile: (765) 423-4564
Email: rcm@rtslawfirm.com
rcr@rtslawfirm.com